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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 686/2019

STATE

..... Petitioner

Through: Mr Amit Gupta, APP for State with
SI Ramesh Kumar, PS Nihal Vihar.

versus

DEEPAK KUMAR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.12.2019

CRL.M.A. 42287/2019

1. For the reasons stated in the application, the delay in filing is condoned.

2. The application is disposed of.

CRL.M.A. 42286/2019

3. Allowed, subject to all just exceptions.

CRL.L.P. 686/2019

4. The State has filed the present petition seeking leave to appeal against the judgment dated 16.07.2019, whereby the respondent had been acquitted of the offences under Sections 308/34 of the IPC.

5. The said case related to a FIR No.237/2017, under Sections 308/323/34 of the IPC, registered with PS Nihal Vihar. It is the

prosecution's case that on 11.05.2017 at about 11:00 PM, the respondent had assaulted the three victims – Ayaz, Farzan and Faizan with a beer bottle. It is alleged that the assault was done under such circumstances that if any of the injured persons had died as a result of the said assault, the same would amount to culpable homicide not amounting to murder.

6. In order to establish their case, the prosecution had examined eight witnesses including the three injured persons – Faizan (PW-1); Ayaz (PW-2) and; Farzan (PW-5). Faizan had deposed that he was working in a factory and on the date of incident, his two cousins, namely, Ayaz & Farzan had gone out to have eggs from a *rehri*, which was present in front of the factory. He stated that he heard loud voices outside the factory and when he went outside, he saw the respondent with a beer bottle in his hand and his cousins Ayaz & Farzan had injuries on their body. He deposed that thereafter, the respondent also gave him a blow from the beer bottle, which landed on his head.

7. The testimony of PW-1 was not consistent with the testimony of Farzan (PW-5). Farzan had deposed that he, along with his cousin Faizan and Ayaz, had gone out to purchase eggs. He found that two boys, including the respondent, were already standing there. One of the said boys (the respondent), who was in an inebriated condition had fallen over Ayaz. This was objected to by Ayaz. In response, the said boy had picked up a bottle and given a blow on Ayaz's head. He stated that when he and his cousin brother (Faizan) tried to intervene, the other boy (a juvenile) had picked up a bottle and given a blow on his head.

8. The trial court had examined the evidence obtaining in the case and

found that the inconsistencies between the testimonies of the injured persons were material. It is apparent that the version of the incident of any of the injured person did not conform to the version of the other injured persons. The trial court had noted that the respondent had also suffered injury in the incident. However, the MLC of the respondent had not been produced. In view of the above, the court had also doubted the impartiality of the investigation and in the opinion of this Court, rightly so.

9. In view of the above, the trial court concluded that the prosecution had been unable to establish, beyond reasonable doubt, that the respondent was guilty of committing the offence for which he was charged. The view expressed by the trial court is based on cogent reasons and after evaluation of the testimonies of various witnesses. Thus, this Court finds no compelling reasons to interfere with the impugned judgment.

10. In view of the above, the petition seeking leave to appeal is rejected.

VIBHU BAKHRU, J

DECEMBER 10, 2019
MK